From Modern to Postmodern Penality? A Response to Hallsworth

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Abstract

In a recent article, Hallsworth (2002) seeks to defend the claim that contemporary changes in penal practice indicate the rise of a postmodern penality. Hallsworth proposes that the modern-postmodern distinction is both a legitimate and valuable framework within which to situate recent developments in penal practice. In this paper, we argue that Hallsworth has several questions yet to answer before he can sustain claims for a postmodern penality and for the modern-postmodern distinction as the most useful analytical framework for analysing this transition. We identify three issues raised by Hallworth's argument, encompassing methodological, empirical and conceptual questions. We argue that his approach exhibits some methodological problems, especially in respect of his use of an 'ideal type' method; that there are important empirical gaps in his account, in that he fails to deal adequately with counter-factual evidence; and that his account exhibits a conceptual conflation between 'postmodernity' as a social formation and 'postmodernism' as an anti-foundational epistemology for social inquiry. Given these methodological, empirical and conceptual lacunae, we suggest that a convincing case for a 'postmodern penality' has not been made.

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Introduction

In a recent article, Hallsworth (2002) seeks to defend the claim that contemporary changes in penal practice indicate the rise of a postmodern penality. Against theorists such as Garland, Lucken, and O'Malley, Hallsworth proposes that the modern-postmodern distinction is both a legitimate and valuable framework within which to situate recent developments in penal practice. This contribution situates Hallsworth within a longstanding debate over how to understand contemporary social change. Are we modern? Or are we postmodern? Are we both, or are we neither? This debate ranges across several disciplines and raises several questions concerning the use of empirical data and the epistemological basis of its interpretation. In this paper, we argue that Hallsworth has several questions yet to answer before he can sustain claims for a postmodern penality and for the modern-postmodern distinction as the most useful analytical framework for analysing this transition. Indeed, the juxtaposition of these claims itself raises an important problem for Hallswoth's analysis. Here, we identify three issues raised by Hallworth's argument, encompassing methodological, empirical and conceptual questions. We deal with each of these in turn.

In the first section we discuss methodological issues related to the use of ideal-typical models, in this case the model of modern penal systems developed by Hallsworth. We argue that Hallsworth's account displays a crucial slippage between the phenomena about which he is supposedly making generalisations (modern penal systems) and *representations* of that phenomena (rhetorical discourses about penal practice). We suggest that this is an error all to frequent amongst those engaging in 'postmodern' social analysis, where 'text' is conflated with the extant socio-material

realities of actual practices. The second section deals with a problematic use of empirical data to support the case for a postmodern penality. Hallsworth charts certain trends in penal practice, many of which are significant in the USA, so that the USA appears to be in the vanguard of postmodern penality. However, we can identify at least four western societies in which these trends are not occurring. We note that models of capitalist social development vary tremendously, so that interpreting such trends requires engagement with counter-factual evidence in order for the analysis to carry explanatory weight. At the same time, the evidence for a postmodern penality requires the imposition of a unity upon penal practices, which they do not in practice demonstrate. A further difficulty arises in that the concept of the 'postmodern' appears so vague as to leave us wondering what, exactly, is *post* about penal trends. In the third and final section we raise the question of a problematic slippage in Hallsworth's paper between a sociological analysis of 'postmodernity' as an object to be investigated, and a postmodern sociology. As Turner (1990), amongst others, has pointed out, a sociological approach to postmodernity locates the object of study within wider economic, political and cultural shifts, whereas a postmodern sociology deconstructs the foundational assumptions of modernist thought. By resting his case for a postmodern penality on supposed empirical trends in practice, Hallsworth appears to be engaging in the former. However, drawing on Bataille to develop the analytical case places him in the latter category. This leaves the argument in the unsustainable position of using an anti-foundational epistemology to support a foundational ontology. In the conclusion we note that the various problems we raise bedevil many 'post' theories, and point to alternative interpretations which locate changing penal practices within the continuity of capitalist commodification. Overall,

we argue that the various questions we raise would have to be addressed in order to establish a plausible case for a postmodern penality.

Methodological questions: reading off social reality from talk and text.

The first problem relates to what might be viewed as a problematic application of Weber's 'ideal-type' methodology. Hallsworth proceeds in a logical manner, first defining 'penal modernity' by means of developing 'an ideal-typical model classifying the underlying principles around which they [i.e. modern penal systems] are organized' (p.149). He identifies four principles underlying the emergence of 'penal modernity', namely: the amelioration of pain delivery; equivalence in the allocation of penal sanctions; the organisation of penal regimes according to 'productive expenditure'; and statutory due process as the basis of judicial judgement. Taken together, these four principles are said to differentiate modern penality from its pre-modern precursor (pp.149-151). Drawing upon Georges Bataille, Hallsworth locates these four principles as symptomatic of a transition from a pre-modern 'general economy' of excess to a modern 'restricted economy' of rational and balanced exchange. Having identified these key features (along with their underlying logic in the material and symbolic economy) Hallsworth then charts their relative marginalization or partial supercession by other principles, thereby establishing the case for an emerging 'postmodern penality'.

However, it must be recalled that the purpose of the ideal type is to furnish a pure or logical abstraction of a particular *phenomenon* (Weber's familiar targets include 'rational action' and 'bureaucracy'). However, it seems that in Hallswoth's account there is a crucial slippage, such that the phenomenon *about which* he is making generalisations is other than it at first appears. He purports 'to interpret the *features* of modern *penal systems*…the principles around which they are organised'

(p.149 emphasis added). However, he immediately shifts the object of analysis (the phenomenon being subjected to typification) by instead examining the 'self-image' of penal modernity. That is to say, the 'underlying principles' he identifies are not generalisations about *penal practices* (the principles of social action), but the representations and rhetorical tropes with which modern philosophers, sociologists and visionaries built up an *imaginary* of a modern penality. Hallsworth himself refers not only to 'self-image', but also to 'utopias' and 'reveries' (p.152). The mapping of 'penal modernity' with which we are presented amounts to an account of the ideological manifestos (and sometimes apologia) of 'modern penality', rather than the actual practices around which it might have been organised.

Hallsworth may, of course, respond that these 'self-images', 'utopias' and 'reveries' furnished the blueprints that were put into action in the building and operation of modern penal institutions, thereby ensuring that the 'rhetoric' fairly captures the 'reality'. Yet, if this is the claim, then Hallsworth leaves himself open to the accusation of 'naïve idealism' (in the philosophical sense) or 'cultural determinism', namely that he reads off the reality of social practices from the *talk about* those practices. Because a judicious sampling of philosophers, social thinkers, political actors, etc. *represented* modern penal institutions as operating upon these principles (e.g. equivalence before the law, due process) in no way warrants the belief that such principles were necessarily actualised in penal practices. Hallsworth has here fallen prey to an error all to frequent amongst those propounding 'postmodern' social analysis, namely that of conflating 'text' with the extant socio-material realities of actual practices. As Bruno Latour (1993:66) reminds us, while the authors of the 'modern Constitution' claim that this is/was an era of pure rationality, pure instrumentality, and pure calculation, 'we must be careful not to take them at their

word...'. Rather, we need to be aware of the 'several modernities' (c.f.,Lash, 1999; Penna et al, 1999; McClintock, 1995) that co-exist historically and contemporaneously. That is to say, 'modernity' has never been a uni-dimensional phenomenon, but encompasses several conflicting and contradictory logics, experiences and representations. The extent to which 'penal modernity' actually operated upon the principles specified by Hallsworth is a question for rigorous empirical-historical investigation, and cannot simply be *assumed* to be the case based upon a purported 'self-image' (indeed, invoking the notion of 'self-image' is a somewhat question-begging endeavour, in that it *presupposes* exactly what needs to be *proved*, namely that there existed a coherent entity called 'penal modernity' that could entertain an image of 'itself').

If the existence of a coherent 'penal modernity' founded upon key organizing principles hasn't been adequately established, what of the supposed transformations in penal practice that warrant a 'postmodern' appellation? Acknowledging the work of Garland and O'Malley, Hallsworth agrees that the chronic persistence of 'high crime societies' has resulted in contradictory and volatile responses. He, however, identifies three forms of response: the persistence of 'modern' (rehabilitative, correctional) projects; the continued rationalization and modernization of the penal order; and the rise of 'postmodern penality'. The first thing to note here is that two of the three component trends are explicitly identified as *modern* – so should we assume that the current penal order is 2/3 modern and 1/3 postmodern? If the responses to penal crisis remain largely within the scope of Hallsworth's own frame of 'penal modernity', then the thesis that we are seeing 'an emergent postmodern penality' has to be qualified to such an extent that its analytical value is greatly weakened.

Evidential questions: interpretation and the implications of counter-factuals

Setting this aside for the moment, we can move on to a second problem that has both an empirical and conceptual dimension, which we discuss in turn. Let us examine the third, specifically 'postmodern' component of contemporary penal trends. Hallsworth claims that this trend comprises three developments: re-establishment of pain delivery as legitimate; 'arbitrary and disproportionate sentencing' as commonplace; and 'unproductive expenditure' as a 'dominant norm'. These are seen as symptomatic of a revived 'general economy of excess', as compared to the 'restricted economy' of rational exchange typical of modernity. These trends hence contrast with his aforementioned 'principles of penal modernity', thus justifying the claim that contemporary penality has a significant 'postmodern' component.

Firstly, is there sufficient evidence to support the generalised rise of such penal practices? What Hallsworth furnishes, unfortunately, are numerous empirical generalisation which are stated rather baldly, with little in the way of elaboration or qualification. For example: 'Punitive sanctions have significantly increased'; 'western societies' appetite for pain delivery has increased significantly', and that prison populations in 'western societies' have undergone 'unrelenting expansion' (p.156). These are highly problematic claims. His examples of new (or revived) penal practices (such as chain gangs, 'three strikes and out' laws, expanding use of the death penalty) are all drawn from the USA, and there is no corroborating evidence cited from studies of European or other countries. Indeed, Hallsworth seems to suggest that the USA is the vanguard of 'postmodern penality', leading the way for other western societies. There is no acknowledgement that the proliferation of such penal initiatives in the USA might be the outcome of contextually-specific socio-economic, political and cultural factors, or evidence that other countries converge or diverge from the

American situation, in whole or in part. Rather, they are seen as subject to a general logic sweeping 'western societies' which can be read-off from its most 'advanced' instance.

This is an obviously flawed approach. For example, while prison populations increased fivefold in the USA between 1970 and 1996, this trend hasn't necessarily been mirrored in other western countries – thus, between 1985 and 1995 prison population (per 100,000) in Denmark and Ireland remained unchanged, while it fell in Germany and Austria (Taylor, 1999: 188). So, here we have four 'western societies' in which the 'unrelenting expansion' of incarceration appears not to have taken place! Does such counter-factual evidence not undermine the claim that there has been a generalised shift toward 'pain-delivery', 'excess' and 'disproportionate sentencing'? Equally, behind the 'tough on crime' and 'zero tolerance' *rhetoric* of politicians, there is a much more complex reality, including continued investment and experimentation with community-based and integrative initiatives (see for example Reiner, 2000). There is a long-standing recognition in both academic and policy circles that models of (capitalist) social development vary tremendously, with a particular distinction made between the Anglo-American and European models (c.f., McGrew, 1992; Pinch, 1997). The development of industrial societies displays different combinations of control, social integration, welfare provision, labour market strategies and so on, such that the social and political 'steering mechanisms' (Offe, 1984) that realise different models of social development display significant variations (Esping-Andersen, 1990). Currently, the European Union makes much of the distinction between a 'social model of Europe' (c.f., Larsson, 1998) which is opposed to an American model.

Moreover, we should note that not only do societal models of development vary, but the application of different penal strategies (liberal, illiberal, punitive, integrative, etc.) also varies crucially according to the social, economic and cultural classifications brought to bear on different populations – strategies for juvenile justice can vary significantly from those for 'adult' offenders; the response of penal institutions to men and women exhibit great divergences; the application of 'arbitrary and disproportionate sentencing' has long existed with reference to marginalised or stigmatised groups (e.g. those from minority ethnic groups, the working classes). The point here is that the deployment of different penal strategies must be contextualised in different and changing social, political and cultural contexts, policy frameworks and trajectories of national criminal justice systems – doing so enables us both to identify the crucial variations in penal practice across national contexts, and to hypothesise the different causal mechanisms contributing to them. To simply attribute them to the general rubric of an emergent 'postmodern penality' amounts to a non-explanation, or one that levels different phenomena and their respective causes through an academic sleight-of-hand, imposing upon them a spurious descriptive unity.

Secondly, the concept of the 'postmodern' appears to suffer a potentially fatal indeterminacy. What, exactly, is *post* about these penal trends? Hallsworth's own account (drawing upon Bataille's aforementioned distinction), sees the practices he identifies with 'postmodern penality' as a return of a *pre*-modern logic of excess, vengeance and spectacle. It is the 'return of the repressed'. On this basis, recourse to these punitive endeavours is *non*-modern, *a*-modern, *pre*-modern, possibly *anti*-modern – but is it *post*-modern in any meaningful sense? The picture is further confused in that Hallsworth acknowledges that these practices didn't necessarily

disappear from 'penal modernity' – there was a 'persistence of the excess economy that could easily at times be invoked' and 'the distinctly modern principles…could easily be revoked by turns in the penal pendulum' (p.154). Given this concession, the obvious suggestion is that what we are currently witnessing is just such a partial evocation of the excessive economy of punishment, a partial revocation of modern principles. In other words, Hallsworth's own concessions (both about the persistence of an excessive economy of punishment in 'modernity', and the current co-existence of excessive and 'modern' penal initiatives) suggests that what we are seeing at the moment is not significantly different from the complex oscillations between different penal forms that has long characterised the 'modern' era. It may be yet another 'turn in the penal pendulum', hence impossible to distinguish from previous evocations. There appears little in Hallsworth's own account to warrant labelling these trends 'postmodern'. Perhaps the problem here in part arises from the fact that Hallsworth's use of the term itself has limited analytical specificity or content. As we know, the term entertains very variable, and often contradictory, usage. The 'postmodern' has variously been defined in terms of the 'death of the humanist subject', 'the explosion of difference or alterity', the collapse of the distinction between 'representation' and 'reality' in an age of mediated 'simulacra', and so on. Barring a reference to Lyotard's socio-epistemological depiction of the 'postmodern condition' as an 'incredulity to meta-narratives' (or generalising and self-validating discourses of Truth), Hallsworth offers us no specification of what we ought to understand by the term. It seems, ultimately, to denote 'something different' from 'modernity', where modernity has already been evacuated of any inconvenient (a-rational, excessive) elements and turned into an abstraction against which it is also too easy to identify incompatible

phenomena in current penal practices. We turn next to these and further conceptual problems arising from Hallworth's use of the term ‘postmodern’.

Conceptual questions: a sociological analysis of postmodernity or a postmodern sociology?

Thirdly and finally, we raise a highly problematic conceptual slippage between ‘postmodern’ and ‘postmodernism’, in Hallsworth’s account. The terms 'modern' and 'postmodern' are now commonplace in much contemporary social science but as we note above there is no agreement over their respective meanings and implications. The modern-postmodern dyad can be understood as a shorthand for an extensive series of debates about central concepts and perspectives in social theory generally. The debates range across a number of concepts: structure and agency, history, culture, subjectivity, public and private, identity, ethics and science, and more. In this debate, the term 'postmodern' has come to symbolise a dispute in social science about personal and social change in the contemporary world. Some commentators treat the postmodern as a distinct form of society or an historical period, others assert that the 'post' is a part of the modern, while yet others claim the postmodern as an epistemological or theoretical rupture which signals a change both in social experience and in the cultural categories in which such experience is explained and understood (O’Brien and Penna, 1998). In many instances, these different layers of meaning - historical, sociological and philosophical - are tangled together and lead to confusion about whether the debate refers to evidence of a transition to a post-modern era or to a clash of perspectives through which to theorise the modern era.

The confusion is common and, in part, illustrative of a confusion between a sociological analysis of 'postmodernity' as empirical trends, conditions, or phenomena - that is, as an object to be investigated - and a postmodern sociology. A sociological

approach to postmodernity locates the object of study within wider economic, political and cultural shifts, whereas a postmodern sociology deconstructs the foundational assumptions of modernist thought (Turner, 1990). This distinction is important, signifying either evidentially-based arguments or arguments over epistemology. To propose that we are witnessing a shift to 'postmodernity' is to engage in a highly complex and disputed theoretical field. 'Postmodernity' is a label that has been used to refer to contemporary changes in industrial, scientific, cultural and social organisation (c.f., Crook et al, 1992). A postmodernisation thesis proposes that societies are undergoing a process of profound and foundational social change (Crook et al, 1992: 1). The idea that contemporary social institutions, relationships and structures serve to reverse or invert modern patterns of everyday and institutional life is central to the argument that the postmodern represents an historical break with the modern. A postmodernisation thesis (such as that proposed by Crook et. al.) is basically a systems analysis focusing on a perceived transition between a modern society with well-mapped characteristics and tendencies and an as yet-to-appear postmodern society whose contents and principles currently exist only as outline sketches. In this way, a sociology of postmodernisation seeks to identify the important emergent trends of this transformation - the outlines of the new social order.

This sort of account has much in common with systems theoretical approaches. Its theory of social change is based on a concept of system self-transformation, the connection between whose parts is indicative of the larger whole (O'Brien and Penna, 1998). This construction is contested in 'postmodernism' - postmodern social theory. The latter is not a single academic or theoretical enterprise, but encompasses many different theories, drawing on an eclectic range of thinkers including Nietszche, Derrida, Kristeva, Lyotard and Lacan. Postmodernism, as a

theoretical exercise, comprises a political counterpoint to a sociology of postmodernism, as would any theoretical programme informed by Nietszche, who writes, for example:

> Against positivism, which halts at phenomena - "There are only facts" - I would say: No, facts are precisely what there is not, only interpretations. We cannot establish any fact "in itself". (cited in Dickens and Fontana 1994: 7).

The implication here is that there is no factual ground on which to base theory and practice - in other words, there are no factual grounds to distinguish true and false interpretations. Along with poststructuralist work, theories derived from these epistemological roots have led to the 'anti-foundational turn' in social theory. The long tradition of social thought influenced by Nietzsche's emphasis on the arbitrary character of grammatical structure underpins the deconstructive criticism associated with postmodernism (Kellner, 1989).

In Hallsworth's account, at first glance we seem to be reading a sociological account of postmodernity, an account which locates penal practice, through a set of empirical claims, as evidence of a transitional shift (although not, as might be expected, connected to other shifts) from a modern to a postmodern penality. However, the theoretical argument which is used to buttress this claim is derived from Bataille, whose work is a sustained critique of modernity's own self-understanding. It is important to note that Bataille's ouvre is squarely placed within the tradition of deconstructive criticism. In particular, it is important to appreciate the context of Bataille's work. Writing from the early twentieth century and influenced by Nietzsche's philosophy (as well as psychoanalysis and functional anthropology) Bataille provided an intervention in debates with just about all modernist thought including Christianity, humanism, evolutionism and Cartesian dualism, subjecting such thought to sustained interrogation (see Richardson, 1998). During the 1930s this

critique extended to an engagement with theoretical Marxism, deconstructing, through a series of essays and polemics, the foundational concepts underpinning structural Marxism's understanding of structure and agency. The critique is, though, at the same time a critique of classical political economy and actual capitalist social relations with their basis in the accumulation imperative and the work ethic.

A key concept in Bataille's work is the 'general economy'. Against modernist representations of the capitalist economy based upon production, saving and utility, Bataille argues that, much more significant, is a general economy characterised by expenditure without return, waste, loss, disequilibrium, generosity, sacrifice and destruction (see for example, Bataille, 1988; 1985). Social agents or actors are understood as driven by excesses: of energies- fantasies, drives, needs and so on- in contrast with modernism's rational-actor model, where the unveiling of false consciousness or liberation from pre-modern superstition will lead social actors to understand where their self-interest lies. Rational actors are the stuff of modern social theory, a crucial premise of Enlightenment thought, along with evolutionary accounts of historical development. It is this modernist narrative that Bataille sought to challenge, through an emphasis on excess and expenditure, rather than utility and savings, on value articulated as excess, rather than calculatively. In so doing, Bataille arguably provides an essentialist metaphysics of human being, in which human life is contradictory and paradoxical, humans irrational, with a propensity to disaccumulate, waste, and expend, thus resisting capitalist imperatives to accumulate and preserve. Whilst it is impossible here to do justice to Bataille's wide-sweeping writings, it worth noting that much of this writing was aimed at modernist representations of social life so that, for example:

> Mankind has the choice of loving nothing. Because the universe without cause and without aim that brought it into being has not necessarily granted it an acceptable destiny. But anyone frightened by human destiny, who cannot bear the sequence of greed, crimes and poverty, does not have the possibility of being virile…They can tolerate the existence that is their lot only on condition of forgetting what they really are. Artists, politicians and scientists are appointed to lie to them. Therefore those who dominate existence are almost always the ones who know best how to lie to themselves, and, consequently, are best able to lie to others. (in Richardson, 1998:89-90)

Modernity is represented through false foundational claims, false in the Nietzschean sense that language is unstable and foundational meaning impossible, false in the sense that along with Hegelian enlightenment exists profound depths of 'unknowability', and false in the sense that key social actors whose representations are marked by authority, in fact, lie. Modernity, for Bataille, is characterised by numerous contradictory impulses:

> There is in nature and there subsists in man a movement which always exceeds the bounds, that can never be anything but partially reduced to order. We are generally unable to grasp it. Indeed it is by definition that which can never be grasped, but we are conscious of being in its power: the universe that bears us along answers no purpose that reason defines, and if we try to make it answer to God, all we are doing is associating irrationally the infinite excess in the presence of which our reason exists within reason itself…In the domain of our life excess manifests itself in so far as violence wins over reason. Work demands…rational behaviour where the wild impulses worked out on feast days and usually in games are frowned upon. If we were unable to repress these impulses we would not be able to work, but work introduces the very reason for repressing them…Most of the time work is the concern of men acting collectively and during the time reserved for work the collective has to oppose those contagious impulses to excess in which nothing is left but the immediate surrender to excess, to violence, that is. Hence the human collective, partly dedicated to work, is defined by taboos without which it would not have become the world of work that it essentially is (in Richardson, 1998:90-91).

Modernity, then, *never has been* that which we like to think – rational, orderly and so on. We delude ourselves if we think so, we delude ourselves by repression and we deny the manifest signs of excess in all its forms. We are not here endorsing such a view, but we find it odd that such an anti-foundational epistemology is used to support a foundational ontology. This, in our view, is a major question that Hallsworth needs to address in order to sustain his position. If modernity cannot be characterised along the lines Hallsworth proposes, then what is postmodern about the present? And if the excesses of the present are the excesses of modernity, again, how can this be understood as after the modern?

Conclusion

We have sought to demonstrate that Hallsworth's innovative approach to understanding contemporary change in penal practice has still some questions to address before the claim he wishes to make can be sustained. We have pointed to methodological, evidential and conceptual issues that pose numerous problems for analysing contemporary penal practices within a modern-postmodern framework. The questions we raise and problems we point to are not only relevant to Hallsworth's argument, for they bedevil all varieties of 'post' arguments – post-Fordism, post-industrialism, information society and so on – that seek to establish radical ruptures with a past. Although lacking a clear causal mechanism of change and a final end-state to historical development, such theories retain the 'familiar evolutionary typology' found in social theory, particularly in its sociological manifestations, that has a long pedigree. As Kumar (1995:13) points out in relation to information society theses, 'current changes are seen according to a model derived from (assumed) past changes, and future developments are projected following the logic of the model. So just as industrial society replaced agrarian society, the information society is replacing industrial society, more or less in the same evolutionary way.' Such a model of change, one which underpins not only 'information society' but also most postindustrial theories, suffers from attributing characteristics of change to contemporary developments, where it has been, according to Kumar, (1995:18) 'plausibly argued that recent trends are manifestations of a profound change in industrial societies that took place over a century ago'. In short, these various criticisms suggest that the conception of a radical break in social development is greatly overstated, its evolutionary underpinnings over-estimating the degree and

mechanisms of change. It may therefore be the case that *continuity* not change is what characterises contemporary societies. This is particularly pertinent for those who investigate the contemporary governance of capitalist relations.

For example, the increase in incarceration noted by Hallsworth is evident in those countries that have embraced privatised forms of public provision. Oppositional movements that track what is known as 'the prison industry – capitalist punishment', report the situation in the United States with particular concern. According to Silverstein (1997:1) the Corrections Corporation of America has seen its stock market value steadily increase throughout the 1990s, with an 81% rise in revenue in 1995. Another private prison contractor, Esmor, saw a rise in revenue from $4.6 million in 1990 to over $25 million in 1995. To maintain profits and growth, not only are more (private) prisons being built, but they must also be filled. Prisoners become the raw production material for a number of private enterprises then run *within* the prisons, so that Wright (1997) points out that private companies have contracted with at least twenty five US states to start up enterprises inside prisons to take advantage of already existing facilities and low-wage, non-union labour. As has been the case throughout the history of imprisonment in the USA, the majority of prisoners are from minority ethnic groups. The point is, that the increase in incarceration could be understood as simply the extension of neo-liberal governance and capitalist commodity relations.

It can be argued that the techniques and technologies of production may change, but capitalist societies remain organised around the same principles and objectives as always. Kumar (1995:194) suggests the issue of capitalism and postmodernity remains a central question of contemporary social theory. Given these

methodological, empirical and conceptual lacunae, we suggest that a convincing case for a 'postmodern penality' has not been made

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